

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

- 1) BRISTOW FIRST ASSEMBLY OF GOD;
- 2) MARK S. EVANS and
- 3) CHRISTINA J. EVANS, individually, and as  
parents and next of kin to C.J.E. and B.K.E.,  
minor children,

Plaintiffs.

v.

Case No.: 15-CV-523-TCK-FHM

- 1) BP p.l.c.;
- 2) MARATHON OIL CORPORATION;
- 3) MARATHON PETROLEUM CORPORATION;
- 4) KINDER MORGAN, INC.;
- 5) WENDELL SANDLIN;
- 6) BOLIN OIL COMPANY, a Partnership  
comprised of
- 7) D.H. BOLIN,
- 8) D.P. BOLIN,
- 9) R.L. BOWLIN, and
- 10) C.W. BOLIN;
- 11) C.W. STRADLEY;
- 12) BILLY JOE BENNETT and
- 13) PEGGY L. BENNETT;
- 14) LIBERTY NATIONAL BANK f/k/a  
CHICKASHA BANK OF CHICKASHA; and
- 15) C.P. MERCER and
- 16) M. ALINE MERCER; their subsidiaries, heirs,  
estates, successors, executors and assigns of the  
named persons and entities.

Defendants.

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Kinder Morgan, Inc. (“Kinder Morgan”), subject to all of its defenses, which are expressly reserved herein, by and through its

undersigned counsel, hereby removes the above-captioned action from the District Court of Creek County, Bristow Division, State of Oklahoma to the United States District Court for the Northern District of Oklahoma. Kinder Morgan removes this case on the basis of this Court's original diversity jurisdiction under 28 U.S.C. § 1332(a). Complete diversity of citizenship exists among the properly joined parties in this action and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In support of removal, Kinder Morgan states as follows:

## **I. INTRODUCTION**

1. On June 24, 2015, Plaintiffs Bristow First Assembly of God, Mark S. Evans and Christina J. Evans, individually and as parents and next of kin to C.J.E. and B.K.E., minor children ("Plaintiffs"), filed a Petition (the "Petition") in Case No. BCJ-2015-00016 in the District Court of Creek County, Bristow Division, State of Oklahoma (the "State Court Action").

2. This Notice of Removal is filed within the time permitted by 28 U.S.C. § 1446, as service of process was made on Kinder Morgan in the State Court Action on August 25, 2015. In compliance with 28 U.S.C. § 1446(a) and Rule 81.2 of the Local Civil Rules for the United States District Court for the Northern District of Oklahoma, all documents filed and/or served in the State Court case as well as the docket sheet are attached hereto. A true and correct copy of the Summons served on Kinder Morgan in the State Court Action is attached as Exhibit 1, a true and correct copy of the Petition is attached as Exhibit 2, and a true and correct copy of the Docket Sheet is attached as Exhibit 3. Kinder Morgan has not taken any action in the State Court Action.

## **II. BASES FOR DIVERSITY JURISDICTION**

3. This Court has original diversity jurisdiction over this case under 28 U.S.C. § 1332(a). Complete diversity of citizenship exists among the properly joined parties and the

amount in controversy exceeds the sum of \$75,000.00, exclusive of costs and interest. Complete diversity of citizenship among the properly joined parties existed at the time Plaintiffs filed the State Court Action and exists at the time of this Notice of Removal.

**A. Diversity of Citizenship**

4. Complete diversity of citizenship exists among Plaintiffs and all properly joined Defendants in this lawsuit because Plaintiffs are Oklahoma citizens, and each properly joined Defendant in this lawsuit is a citizen of a State other than Oklahoma or a citizen of a foreign state. *See* 28 U.S.C. § 1332(a)(3) (conferring diversity jurisdiction in certain instances where the action is between “citizens of different States and in which citizens or subjects of a foreign state are additional parties[.]”).

**i. Citizenship of Plaintiffs**

5. Plaintiff Bristow First Assembly of God is a not-for-profit corporation church, organized and existing under the laws of the State of Oklahoma, with its principal place of activity in Bristow, Oklahoma. Petition, ¶ 1, Exhibit 2.

6. Plaintiffs Mark S. Evans, Christina J. Evans, and their minor children, C.J.E. and B.K.E., are now, and were at the time that the State Court Action was filed, domiciled in, and therefore citizens of, the State of Oklahoma. Petition, ¶ 2, Exhibit 2; *Smith v. Cummings*, 445 F.3d 1254, 1259-60 (10th Cir. 2006) (“For purposes of federal diversity jurisdiction, an individual's state citizenship is equivalent to domicile.”).

**ii. Citizenship of the Properly Joined Defendants<sup>1</sup>**

7. The Defendants properly joined in this lawsuit are BP p.l.c. (“BP”), Marathon Oil Corporation (“Marathon Oil”), Marathon Petroleum Corporation (“Marathon Petroleum”) and Kinder Morgan (collectively, the “Properly Joined Defendants”). The Properly Joined Defendants are defined in the Petition as the “Operational Defendants”, and each is now, and was at the time the State Court Action was filed, citizens of a jurisdiction other than the State of Oklahoma.

8. For diversity jurisdiction purposes, a corporation is a citizen of every State and foreign state in which it is incorporated and the State or foreign state in which its principal place of business is located. 28 U.S.C. § 1332(c)(1).

9. As correctly pled in the Petition, Defendant BP is a corporation organized and existing under the laws of the United Kingdom, with its principal place of business in London, England. Therefore, it is a citizen of the United Kingdom. Petition, ¶ 3, Exhibit 2. A true and correct copy of the Summons issued for BP is attached as Exhibit 4.

10. As correctly pled in the Petition, Defendant Marathon Oil is a Delaware corporation with its principal place of business in Houston, Texas. Therefore, it is a citizen of Delaware and Texas. Petition, ¶ 4, Exhibit 2. A true and correct copy of the Summons issued for Marathon Oil is attached as Exhibit 5.

11. As correctly pled in the Petition, Defendant Marathon Petroleum is a Delaware corporation with its principal place of business in Findlay, Ohio. Therefore, it is a citizen of

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<sup>1</sup> The term “Properly Joined Defendants” as used herein refers solely to those Defendants who were not fraudulently joined by Plaintiffs, and does not prejudice or waive any Defendant’s right to assert and defend on the basis that it is not a proper defendant to this action nor liable for Plaintiffs’ claims.

Delaware and Ohio. Petition, ¶ 4, Exhibit 2. A true and correct copy of the Summons issued for Marathon Petroleum is attached as Exhibit 6. The Court file also contains a letter from The Corporation Company to Michael Blaschke regarding purported service on Marathon Petroleum. It is attached as Exhibit 7.

12. As correctly pled in the Petition, Defendant Kinder Morgan is a Delaware corporation with its principal place of business in Houston, Texas. Therefore, it is a citizen of Delaware and Texas. Petition, ¶ 5, Exhibit 2.

13. Therefore, complete diversity of citizenship exists between Plaintiffs and the Properly Joined Defendants under 28 U.S.C. § 1332(a)(3). Plaintiffs are now, and were at the time that the State Court Action was filed, citizens of Oklahoma. The Properly Joined Defendants are now, and were at the time that the State Court Action was filed, citizens of the United Kingdom, Texas, Delaware, and Ohio.

### **iii. Citizenship of the Other Defendants**

14. The Petition also names as defendants six persons, a partnership composed of four persons and a bank (collectively, the “Other Defendants”).

15. According to the Petition, the six persons named as Defendants in the Petition (defendants Wendell Sandlin, C.W. Stradley, Billy Joe Bennett, Peggy L. Bennett, C.P. Mercer and M. Aline Mercer) and their heirs, estates, successors, executors, and assigns are residents of Oklahoma. Petition, ¶ 7, Exhibit 2. “Residence alone is not the equivalent of citizenship, but the place of residence is *prima facie* the domicile.” *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (citing *Walden v. Broce Construction Co.*, 357 F. 2d 242, 245 (10th Cir. 1966)) (holding that citizenship was established for diversity jurisdiction purposes by evidence of residence). As such, based on the averments made by Plaintiffs, which Kinder

Morgan admittedly has not been able to independently verify, these defendants are citizens of Oklahoma. Even if Plaintiffs' averments are incorrect, such that any of these parties is determined not to be an Oklahoma citizen, that party's citizenship would necessarily be different from that of the Plaintiffs and, accordingly, would in no way defeat this Court's diversity jurisdiction if properly joined in this action.

16. According to the Petition, Defendant Bolin Oil Company is a partnership comprised of D.H. Bolin, D.P. Bolin, R.L. Bowlin [sic], and C.W. Bolin, all of whom are residents, and therefore citizens of Oklahoma. Petition, ¶ 7, Exhibit 2. As such, based on the averments made by Plaintiffs, which Kinder Morgan admittedly has not been able to independently verify, Defendant Bolin Oil Company is a citizen of Oklahoma. *See Depex Reina 9 Partnership v. Texas Internat'l Petroleum Corp.*, 897 F.2d 461, 463 (10th Cir. 1990) ("In the case of a partnership, the partnership is a citizen of each state in which a partner is a citizen."). Even if Plaintiffs' averments are incorrect, such that Bolin Oil Company is determined not to be an Oklahoma citizen, Bolin Oil Company's citizenship would necessarily be different from that of the Plaintiffs and, accordingly, would in no way defeat this Court's diversity jurisdiction if properly joined in this action.

17. Defendant Liberty National Bank f/k/a Chickasha Bank of Chickasha is a domestic bank organized under the laws of Oklahoma with its principal place of business in Lawton, Oklahoma. Therefore, it is a citizen of Oklahoma. Petition, ¶ 7, Exhibit 2.

18. Kinder Morgan acknowledges that if any of the Other Defendants were properly joined in this action, diversity would not be complete. However, as set forth below, the Other Defendants are nominal and are improperly joined in this lawsuit. Accordingly, the Court should disregard their citizenship for purposes of determining diversity.

## **B. Improper Joinder of the Other Defendants**

19. The Other Defendants are nominal and have been improperly joined in this action because there is no possibility that Plaintiffs can establish a cause of action against them.

20. In general, “a defendant’s right of removal cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy.” *Von Downum v. Synthes*, 908 F. Supp.2d 1179, 1182 (N.D. Okla. 2012) (quoting *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)).

21. A removing defendant can demonstrate fraudulent joinder by showing that the plaintiff “has no possibility of recovery against the non-diverse defendant.” *Von Downum v. Synthes*, 908 F. Supp.2d at 1182. *See also Dodd v. Fawcett Publications, Inc.*, 329 F.2d 82, 85 (10th Cir. 1964) (“...though a cause of action be stated, the joinder is...fraudulent if in fact no cause of action exists”); *Wiley v. Safeway Stores*, 400 F. Supp. 653, 655 (N.D. Okla. 1975) (“When an issue of fraudulent joinder of a nondiverse defendant is raised, the Court must determine whether a cause of action is stated against the nondiverse defendant as provided by state law.”).

22. The standard for determining that no cause of action can be sustained against the nondiverse defendant is similar to the standard for granting a motion to dismiss for failure to state a claim against that defendant. *See Slover v. Equitable Variable Life Ins. Co.*, 443 F. Supp.2d 1272, 1278-79 (N.D. Okla. 2006); *Town of Freedom, Okla. v. Muskogee Bridge Co., Inc.*, 466 F. Supp. 75, 78 (W.D. Okla. 1978). As a result, if a plaintiff cannot “make at least minimal factual allegations, either direct or inferential, as to every material element of [its] claim[.]” the court will make a finding of fraudulent joinder. *Slover*, 443 F. Supp.2d at 1279.

23. Here, the Petition asserts eleven Claims for Relief and contains a single integrated Prayer for Judgment. The Prayer for Judgment seeks relief *only* against the Operational Defendants. Petition, Wherefore Clause, Exhibit 2. The Prayer for Judgment does not seek *any* relief from the Other Defendants. *Ibid.*

24. In addition, at the time of the filing of their Petition, Plaintiffs applied to the Clerk of the Court and received Summonses issued to each of the four Operating Defendants. Docket Sheet, Exhibit 3. Neither at that time nor at any subsequent time have Plaintiffs applied to the Clerk of the Court for the issuance of Summonses to any of the Other Defendants. *Ibid.*

25. All eleven Claims for Relief in the Petition are asserted against the Operational Defendants. Only one of the eleven Claims for Relief in the Petition even mentions the Other Defendants.

26. The single Claim for Relief Plaintiffs assert against the non-diverse Other Defendants is the Ninth Claim For Relief which is entitled “Declaratory Judgment/Indemnification/Contribution” and which seeks a declaratory judgment of Plaintiffs’ indemnification and contribution rights against both the Operational Defendants and the Other Defendants. This claim is stated as follows: “To the extent Plaintiffs are hereafter made subject to claims for damages, injunctive relief, remediation, or other relief resulting from pollution on the land or emanating therefrom, Plaintiffs seek an order declaring the right of the parties and requiring All Defendants to indemnify Plaintiffs and hold them harmless from any such claims, damages, injunctions or any such other relief.” Petition, ¶ 30, Exhibit 2. The Petition explains that “upon information and belief, Defendants other than the Operational Defendants were innocent purchasers, owners, occupiers, mortgagees, and sellers of the Church properties as the



Church has also been, and are subject only to claims of indemnification or contribution.”

Petition, ¶ 10, Exhibit 2.

27. On the face of the Petition and under Oklahoma law, Plaintiffs have failed to state a viable claim for a declaratory judgment of their indemnification or contribution rights against the Other Defendants. Plaintiffs’ claim is not authorized by the Declaratory Judgment Act, nor do the circumstances support a claim for indemnification or contribution.

**i. Plaintiffs’ Claim under the Declaratory Judgment Act**

28. Plaintiffs’ claim under the Declaratory Judgment Act must fail for at least two reasons, as explained in more detail below. First, the Declaratory Judgment Act does not permit declaratory judgments regarding tort liability. Second, Plaintiffs’ claim is not justiciable because it does not present an actual controversy.

29. As a claim based on tort liability, Plaintiffs’ request for declaratory relief falls outside the circumscribed scope of Oklahoma’s Declaratory Judgment Act. That statute states that “no declaration shall be made concerning liability or nonliability for damages on account of alleged tortious injuries to persons or to property[.]” 12 O.S. § 1651. *See also Easterwood v. Choctaw Cnty. Dist. Attorney*, 45 P.3d 436, 440 (Okla. Civ. App. 2002) (“To the extent Plaintiff’s claims sound in tort, § 1651 proscribes a declaration of rights.”). Here, Plaintiffs’ claim for declaratory relief requires, on its face, a determination of tort liability – indeed, there can be no implied indemnification or contribution right without it. *See, e.g.*, 12 O.S. § 832(A) (“When two or more persons become jointly or severally liable *in tort* for the same injury to person or property or for the same wrongful death, there is a right of contribution among them...” (emphasis added)). That Plaintiffs have not pled a specific underlying tort in their request for declaratory relief does not change the fact that such liability is a necessary predicate to the claim

they have pled. *See Indep. Sch. Dist. No. 561002, Okmulgee Cnty. v. U.S. Fidelity and Guar. Co.*, 972 P.2d 1182, 1183 (Okla. Civ. App. 1998) (“No matter how amended, Plaintiffs/Appellants’ petition for relief was a prayer for declaration concerning liability for damages resulting from an alleged tort...Artful pleading cannot disguise the substance of the action.”). Because Plaintiffs’ claim requires a finding of tort liability, it is excluded from the scope of the Declaratory Judgment Act.

30. In addition, the Declaratory Judgment Act states that “[d]istrict courts may, in cases of *actual controversy*, determine rights, status, or other legal relations[.]” 12 O.S. § 1651 (emphasis added). As the Oklahoma Supreme Court has made clear, “the first requisite of a proper case for declaratory relief is an actual controversy. This Court does not issue advisory opinions or answer hypothetical questions where there is no case or controversy, and this rule does not change when a declaratory judgment is involved.” *Knight ex rel. Ellis v. Miller*, 195 P.3d 372, 374 (Okla. 2008). This “actual controversy” requirement is jurisdictional in nature: “In order to invoke the court’s jurisdiction under our declaratory judgment act, there must be an actual, existing controversy between parties having opposing interests, which interests must be direct and substantial, and involve an actual, as distinguished from a *possible, potential or contingent dispute*.” *Ibid.* (quoting *Gordon v. Followell*, 391 P.2d 242 (Okla. 1964)) (emphasis added); *see also Easterwood*, 45 P.3d at 440.

31. In order to be justiciable, the claim “must be suitable for judicial inquiry, which requires determining whether the controversy (a) is definite and concrete, (b) concerns legal relations among parties with adverse interests and (c) is real and substantial as to be capable of a decision granting or denying specific relief of a conclusive nature.” *Easterwood*, 45 P.3d at 440. Among the requirements that “must exist in order that declaratory relief may be obtained” is that

“the issue involved in the controversy must be ripe for judicial determination.” *Knight ex rel. Ellis*, 195 P.3d at 374 (quoting *Gordon v. Followell*, 391 P.2d at 244).

32. Here, by the very terms of the Petition, Plaintiffs have asserted a purely contingent claim against the Other Defendants. They specifically seek an order only “[t]o the extent that [they] are *hereafter* made subject to claims” – in a completely separate and currently uninitiated action by as-yet unidentified parties – for unknown damages or other relief. Petition, ¶ 30, Exhibit 2. Plaintiffs do not assert that any such claims have been made against them. Kinder Morgan has been unable to identify any claims asserted against Plaintiffs, despite diligent inquiries. As a result, Plaintiffs’ claim for declaratory relief hinges on the speculative possibility that they may “hereafter [be] made subject to claims[.]” Petition ¶ 30, Exhibit 2. In other words, Plaintiffs freely admit that their claim for declaratory relief “is not real, but potential[.]” *Knight ex rel. Ellis*, 195 P.3d at 375.

## **ii. Plaintiffs’ Underlying Claims for Indemnification and Contribution**

33. Even if Plaintiffs’ declaratory judgment claim was authorized by the Declaratory Judgment Act and was justiciable, the underlying claims for indemnification and contribution must fail. Among other things, Plaintiffs have failed to allege required elements of those claims, including a special legal relationship (as required for implied indemnification), tortious acts by the Other Defendants, and joint and several liability (as required by Oklahoma’s Uniform Contribution Among Tortfeasors Act).

34. Plaintiffs do not allege any express contract for indemnification between themselves and the Other Defendants. In fact, Plaintiffs have pled claims against the Other Defendants solely because they are prior interest owners and predecessors of title to the Church land described in the Petition. Petition, ¶ 7, Exhibit 2. Because of the failure to plead the

existence of any contractual indemnity relationship, Plaintiffs' claim for indemnification must be based on implied indemnity.

35. A claim for implied (or equitable) indemnity requires that "a legal relationship exists between the parties." *Nat'l Union Fire Ins. Co. v. A.A.R. Western Skyways, Inc.*, 784 P.2d 52, 54 (Okla. 1989); *see also Sinclair Oil Corp. v. Texaco, Inc.*, 94 Fed. Appx. 760, 768 (10th Cir. 2004) (unpublished), attached hereto as Exhibit 8. Plaintiffs and the Other Defendants share none of the types of relationships that give rise to a right of implied indemnification, such as an employee/employer or a manufacturer/retailer relationship. *See, e.g., Booker v. Sears Roebuck & Co.*, 785 P.2d 297, 298-99 (Okla. 1989). Even a "seller and buyer of real property do not, by virtue of that status alone, have the kind of legal or special relationship Oklahoma courts have required for implied indemnity to exist." *Sinclair Oil Corp.*, 94 Fed. Appx. at 768. Certainly, then, merely appearing within the same chain of title – as Plaintiffs and the Other Defendants do here – does not qualify as a "legal relationship" sufficient for an implied indemnity claim.

36. In addition, in Oklahoma, for a plaintiff to recover under either an implied indemnification or contribution theory, the defendant must bear some level of fault or have engaged in tortious conduct. Indemnification and contribution both function to re-apportion a plaintiff's loss to the defendant, either in whole (in the case of indemnification) or in part (in the case of contribution). *See Nat'l Union Fire Ins. Co.*, 784 P.2d at 54-55. But in either case, the defendant must have acted in a negligent fashion. *See generally id.*

37. In order to assert a viable claim for implied indemnity against the Other Defendants, Plaintiffs must assert that the Other Defendants engaged in negligent conduct. *See Central Nat. Bank of Poteau v. McDaniel*, 734 P.2d 1314, 1316 (Okla. Ct. App. 1986) ("[A] person who, without fault on his own part, has been compelled to pay damages occasioned by the

*primary negligence of another* is entitled to indemnity from the latter whether contractual relations exist between them or not.” (emphasis added) (quoting *Porter v. Norton-Stuart Pontiac-Cadillac of Enid*, 405 P.2d 109 (Okla. 1965)).

38. Likewise, Oklahoma’s Uniform Contribution Among Tortfeasors Act authorizes a claim of contribution only against those jointly or severally *liable in tort* for the same injury. 12 O.S. § 832(A). In short, a determination of liability or fault is required under the statute. Plaintiffs have made no allegations that either they or the Other Defendants have liability arising from any tort.

39. In addition, “[f]or a person to seek contribution under the Uniform Contribution Among Tortfeasors Act,...the parties must be *jointly or severally liable*.” *Daugherty v. Farmers Co-op. Ass’n*, 790 P.2d 1118, 1120-21 (Okla. Civ. App. 1989) (emphasis added). Therefore, “[a]n allegation that the party against whom contribution is sought is solely liable to the plaintiff, or that the party seeking contribution is not liable at all, is insufficient. There can be no contribution in this situation.” *Id.* at 1121-22. But Plaintiffs have asserted no facts that could conceivably give rise to finding of joint and several liability between themselves and the Other Defendants. The bare factual allegation that the Other Defendants and Plaintiffs are current or prior interest owners and predecessors of title does not make them joint tortfeasors under any theory of liability. Petition, ¶ 7, Exhibit 2.

40. On the face of their Petition, Plaintiffs fail to allege the required elements of liability to support implied indemnification and contribution claims. Not only does the Petition fail to allege any wrongful acts or omissions on the part of the Other Defendants, but it also goes so far as to state that the Other Defendants are “*innocent* purchasers, owners, occupiers, mortgagees, and sellers of the [Plaintiffs’] properties, as the [Plaintiffs] have also been[.]”

Petition, ¶ 10 (emphasis added), Exhibit 2. The Other Defendants cannot be simultaneously innocent (as Plaintiffs allege) and also wrongful, tortious actors (as the elements of indemnification and contribution require).

41. Because Plaintiffs' claim for declaratory judgment is neither authorized by law nor justiciable, and because their underlying claim for indemnification and contribution does not allege required elements of those causes of action (indeed, with respect to underlying tort liability, they expressly allege just the opposite), Plaintiffs have no possibility of recovery under the single claim pled against the Other Defendants. The Other Defendants are thus nominal defendants improperly joined in this lawsuit and their citizenship should be ignored for purposes of diversity. *See Lenon v. St. Paul Mercury Ins. Co.*, 136 F.3d 1365, 1369 (10th Cir. 1998) (“[T]he ‘citizens’ upon whose diversity a plaintiff grounds jurisdiction must be real and substantial parties to the controversy. Thus, a federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy.”) (citing *Navaro Savings Association v. Lee*, 446 U.S. 458, 460-61 (1980)).

### **C. Amount in Controversy**

42. The amount in controversy in this action exceeds \$75,000.00, exclusive of interest and costs. Plaintiffs specifically admit as much, stating that “[t]he amount sought in damages is in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code[.]” Petition, ¶ 15, Exhibit 2.

43. Removal is proper if the court finds, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1446(c)(2)(B). In establishing the amount in controversy, a removing defendant may rely on

allegations in the Petition, including any estimate of potential damages alleged by the plaintiff. *See McPhail v. Deere & Co.*, 529 F.3d 947, 955-56 (10th Cir. 2008).

44. Kinder Morgan therefore relies on Plaintiffs' specific allegation that the amount in controversy meets the jurisdictional requirement. Petition, ¶ 15, Exhibit 2.

45. Because Plaintiffs are Oklahoma citizens and the Properly Joined Defendants are citizens of states other than Oklahoma and of a foreign state, and because the amount in controversy exceeds the jurisdictional threshold amount, this Court has original diversity jurisdiction over this case under 28 U.S.C. §§ 1332 and 1441.

### **III. Timeliness of Removal**

46. As required by 28 U.S.C. § 1446(b), this Notice of Removal is timely because it was filed on September 14, 2015, within thirty (30) days of Kinder Morgan's receipt of the Summons and Petition on August 25, 2015.

### **IV. Other Procedural Requirements**

47. Kinder Morgan has filed this Notice of Removal in the United States District Court for the Northern District of Oklahoma, which is the district within which the State Court Action is pending. *See* 28 U.S.C. §§ 1441(a).

48. Because no forum defendant had been served at the time of filing of this Notice of Removal, removal of the State Court Action is not precluded by 28 U.S.C. § 1441(b). (Even if a forum defendant had been served, 28 U.S.C. § 1441(b) would not apply because the only forum Defendants are the Other Defendants who are fraudulently joined as nominal parties, for the reasons stated above, and therefore their presence in the action would not preclude removal. *See Brazell v. Waite*, 525 Fed. Appx. 878, 884 (10th Cir. 2013); *Aguayo v. AMCO Ins. Co.*, 59 F. Supp.3d 1225, 1227 (D.N.M. 2014).)

49. Each of the Properly Joined Defendants has consented to removal of the State Court Action, as required by 28 U.S.C. § 1446(b)(2)(A). *See Bruning v. City of Guthrie*, No. CIV-15-0003-HE, 2015 WL 1843610, at \*2 (W.D. Okla. April 21, 2015), attached hereto as Exhibit 9, (“The court concludes that the better view, and that most likely to prevail if addressed by the higher appellate courts, is that most recently expressed by the Fourth Circuit: a notice of removal signed and filed by an attorney for one defendant, representing unambiguously that the other defendants consent to the removal, satisfies the requirement of consent.”). Specifically, Kinder Morgan has requested and obtained the consent of BP, Marathon Oil and Marathon Petroleum to removal of the State Court Action. True and correct copies of the consents of BP, Marathon Oil and Marathon Petroleum are attached hereto as Exhibits 10, 11, and 12, respectively.

50. Immediately following the filing of this Notice of Removal, written notice of the filing of this Notice of Removal will be provided to all adverse parties, as required by 28 U.S.C. § 1446(d).

51. Kinder Morgan will promptly file a copy of this Notice of Removal with the Clerk of the District Court of Creek County, Bristow Division, Oklahoma, where the State Court Action was pending, as required by 28 U.S.C. § 1446(d).

52. By removing this action to this Court, Kinder Morgan does not waive any defenses, objections, or motions under state or federal law.

53. If Plaintiff challenges the removal of this action, Kinder Morgan requests the opportunity to conduct discovery or brief any disputed issues and to present oral argument in support of its position that this action is properly removable. *See McPhail v. Deere & Co.*, 529 F.3d 947, 954 (10th Cir. 2008).



## V. Conclusion

For these reasons, Defendant Kinder Morgan hereby removes the State Court Action to the United States District Court for the Northern District of Oklahoma, in accordance with 28 U.S.C. §§ 1441 and 1446 and Rule 81.2 of the Local Civil Rules of the United States District Court for the Northern District of Oklahoma. Defendant respectfully requests that this Court assume jurisdiction over this action, that all further proceedings in the State Court Action be stayed, and that this Court ignore the improperly joined Other Defendants' citizenship for purposes of determining diversity.

Respectfully submitted,

Dated: September 14, 2015

s/ Amy Sherry Fischer  
Amy Sherry Fischer, OBA No. 16651  
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**CERTIFICATE OF MAILING**

I hereby certify that on this 14th day of September, 2015, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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